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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 929

COMMONWEALTH OIL REFINING COMPANY, INC.,
Petitioner

- against -

MIGUEL A. MARTÍNEZ, FERNANDO L. BAEZ, GILBERTO MÁRQUEZ, ET ALS., *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

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January 19, 1966

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

Petitioner, Commonwealth Oil Refining Company, Inc., prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of the Common-

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[1] In addition to above named respondents, 382 other employees were named as plaintiffs in Appendix A to the complaint as filed. The names of such additional plaintiffs, who are also respondents here, are listed in Appendix E, *infra* pp. 18a-21a.

wealth of Puerto Rico, entered June 30, 1965,[2] reversing a judgment of the San Juan Part of the Superior Court of Puerto Rico which had dismissed a complaint filed by Respondents and had directed that Respondents' claims be submitted to the grievance and arbitration proceedings required by the collective bargaining agreements entered into by the parties.

CITATIONS TO OPINIONS BELOW

The opinion and judgment of the Supreme Court of the Commonwealth of Puerto Rico are unofficially reported under number 114 of the 1965 series of the Bar Association of Puerto Rico; they are printed in Appendix B, *infra* pp. 3a-8a and are reproduced in the certified transcript (R. 128-133).[3] The judgment of the San Juan Part of the Superior Court of Puerto Rico dismissing the complaint and directing that the claim be submitted to arbitration is not reported. It is printed in Appendix C, *infra* pp. 11a-13a, and is reproduced in the certified transcript of the record (R. 39-41).

JURISDICTION

The judgment of the Supreme Court of the Commonwealth of Puerto Rico is dated June 30, 1965 and was entered on the same date (Appendix B, *infra* p. 8a; R. 133). A petition for rehearing (reconsideration) was duly filed by the petitioner on July 12, 1965 (R. 137-150) and was denied on October 21, 1965 (Ap-

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[2] Rehearing was denied on October 21, 1965.

[3] References are to pages of the certified transcript of the Record which has been filed with this Court.

pendix B, *infra* p. 9a; R. 162). Since Petitioner is claiming a right under a statute of the United States, jurisdiction of this Court is invoked under 75 Stat. 417 (28 U.S.C. 1258(3)). *Goodall-Sanford, Inc.* v. *United Textile Workers of America,* 353 U.S. 550 (1957).

QUESTIONS PRESENTED

1. Whether federal law requires that an employee's additional compensation claim based upon a Puerto Rican statute providing double compensation for work performed during the period for taking food must be submitted to the grievance and arbitration procedures provided for in the collective bargaining agreements between the employer and the union authorized to represent the employee.

2. Whether federal law requires that an employee's wage claim arising out of local statutes enacted subsequent to the execution of collective bargaining agreements between the employer and the union authorized to represent the employee must be submitted to the grievance and arbitration procedures provided for by such agreements, particularly where such rights are subject to collective bargaining.

3. Whether, in deciding that a matter should not be submitted to arbitration in accordance with collective bargaining agreements, the court, under federal law, can consider the merits of the grievance and/or the merits of the arbitration procedure for the settlement of disputes agreed upon by the employer and the employees' authorized agent.

STATUTES INVOLVED

The statutory provision directly involved is Section 301(a) of the Labor Management Relations Act of 1947 (61 Stat. 156, 29 U.S.C. § 185(a)). The text of this provision is reprinted in Appendix A, *infra* p. 1a. Also involved is 29 L.P.R.A. § 283, pp. 191-192 of the 1964 Supplement for use in 1965, the text of which is reprinted in Appendix A, *infra* pp. 1a-2a.

STATEMENT OF THE CASE

Effective June 27, 1961 the Legislature of the Commonwealth of Puerto Rico enacted a statute whereby workers were granted the right to recover double their regular pay rate if they worked during the period of time required by said statute for the purpose of taking their meals except as the employer and employee might otherwise agree by individual stipulation or by collective bargaining. (Appendix A, *infra* pp. 1a-2a).

In disregard of the provisions of applicable collective bargaining agreements, Respondents filed on January 24, 1962, in the Superior Court of Puerto Rico, San Juan Part, a claim against Petitioner seeking recovery of the benefits granted by said Act (R. 1-6).

Following certain preliminary proceedings concerning venue and the constitutionality of the procedural statute under which Petitioner was required to plead, Petitioner filed its answer to the complaint on January 31, 1964 (R. 7-10). In its answer Petitioner alleged, among other things, that it was in interstate commerce and that the Respondents were required to abide by the Grievance and Arbitration procedures

provided in applicable collective bargaining agreements (R. 9).

Thereafter, Petitioner submitted to Respondents a Request for Admissions (R. 11-19). In their answer to the Request for Admissions (R. 22-24), and subsequently by Stipulation (R. 25), Respondents admitted that Petitioner was in interstate commerce; that the collective bargaining agreements referred to in the Request for Admissions were entered into with Respondents' representative, duly certified by the National Labor Relations Board; and that the Grievance and Arbitration clauses of the agreements transcribed in said Request were correct.[4]

Subsequent thereto, the San Juan Part of the Superior Court of Puerto Rico decided on April 2, 1964 that the Respondents' claims were not arbitrable (Appendix C, *infra* p. 10a; R. 26). On June 10, 1964, by way of a motion and before the proceedings had progressed in any material way, Petitioner raised this issue again in the Superior Court (R. 27-36). On the basis of the applicable federal cases, the Superior Court reversed its decision and on June 25, 1964 rendered a judgment dismissing Respondents' claims and directing that they be submitted to arbitration (Appendix C, *infra* pp. 11a-13a; R. 39-41).

On July 30, 1964 Respondents filed with the Supreme Court of Puerto Rico a Petition to Review the judgment of the San Juan Part of the Superior Court of Puerto Rico (R. 43-73). On September 11, 1964 the

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[4] The pertinent provisions of the Grievance and Arbitration clauses referred to above are printed in Appendix D, *infra* pp. 14a-17a (R. 11-13, 15, 16, 18).

Supreme Court issued an order to review the case (R. 88). On June 30, 1965, the Supreme Court rendered an opinion and judgment reversing the judgment rendered by the Superior Court of Puerto Rico. In remanding the case for trial on the merits, it held that Respondents' claims were not arbitrable because (a) recovery was sought under the provisions of a Puerto Rican statute rather than under the collective bargaining agreements; (b) the collective bargaining agreements were entered into prior to the enactment of the said statute and the parties, therefore, could not have intended to arbitrate rights that did not exist at the time the agreements were entered into; and (c) arbitration would entail a delay in the disposition of the claims when the only arbitrable issue would be whether the workers had worked or not during the meal periods, which issue could be resolved by a special master appointed by the trial court. (Appendix B, *infra* pp. 3a-8a; R. 128-133). A timely Motion for Reconsideration was filed by Petitioner on July 12, 1965 (R. 136-150). Reconsideration was denied on October 21, 1965 (Appendix B, *infra* p. 9a; R. 162).

Upon Petitioner's request (R. 165) the Supreme Court of the Commonwealth of Puerto Rico is retaining the mandate in the case to permit Petitioner to file this Petition for Certiorari (R. 176).

REASONS FOR GRANTING THE WRIT

The Supreme Court of the Commonwealth of Puerto Rico has decided important federal questions affecting labor-management relations in a manner in direct conflict with the controlling decisions of this Court and in disregard of congressional policy.

(a) In reversing the lower court and refusing to order arbitration in the instant case, the Supreme Court of the Commonwealth of Puerto Rico has disregarded the clear mandate of this Court and congressional policy requiring federal and state courts alike to enforce agreements to arbitrate. The decisions of this Court in the cases of *Textile Workers Union* v. *Lincoln Mills,* 353 U.S. 448 (1957); *Dowd Box Co.* v. *Courtney,* 368 U.S. 502 (1962); *Teamsters Union* v. *Lucas Flour Co.,* 369 U.S. 95 (1962); *Packinghouse Workers* v. *Needham Packing Co.,* 376 U.S. 247 (1964); and *Republic Steel Corp.* v. *Maddox,* 379 U.S. 650 (1965), clearly require that under Section 301(a) of the Labor Management Relations Act of 1947 (61 Stat. 156, 29 U.S.C. § 185(a)), the claims here in question must be submitted to arbitration. Even though state courts have jurisdiction over litigation within the purview of Section 301(a), they must, under the cited cases, apply the substantive federal labor law which prevails over any conflicting local rules. Established federal policy favors the resolution of labor disputes through the grievance and arbitration procedures established in collective bargaining agreements. *United Steelworkers* v. *Warrior & G. Nav. Co.,* 363 U.S. 574 (1960); *United Steelworkers* v. *American Mfg. Co.,* 363 U.S. 564 (1960); *United Steelworkers* v. *Enterprise Wheel and Car Corp.,* 363 U.S. 593 (1960).

(b) Contrary to the federal labor policy as enunciated in *Teamsters Union* v. *Lucas Flour Co.,* 369 U.S. 95, 103 (1962), the principles considered and the language used by the Supreme Court of Puerto Rico in deciding this case erroneously create, in essence, individualized local rules for the enforcement of agreements to arbitrate in that:

(1) The Supreme Court of Puerto Rico held that since the dispute sought to be arbitrated arose out of alleged rights conferred by Puerto Rican law rather than under the collective bargaining agreements, arbitration was not required.

This holding is in direct conflict with *Buckley* v. *Teyssier,* 332 F. 2d 495, 497 (1964). In that case the United States Court of Appeals for the Ninth Circuit held, in a comparable situation, that all rights of employees, whether derived from statute or from contract, arise out of the fundamental employer-employee relationship established by the collective bargaining agreement. To hold otherwise, as stated by the Court, would "emasculate the arbitration provisions contained in the Collective Bargaining Agreement."

As this Court also has stated, "apart from matters that the parties specifically exclude, all of the questions on which the parties disagree must therefore come within the scope of the grievance and arbitration provisions of the collective agreement." *United Steelworkers* v. *Warrior & G. Nav. Co.,* 363 U.S. 574, 581 (1960). The arbitration clauses of the agreements between Respondents and Petitioner, and more specifically those covering the periods of 1959-61 and 1961-63, are broad and all inclusive and do not exclude any wage claims whatsoever from the subject matter of arbitration (Appendix D, *infra* pp. 14a-17a; R. 11-19).

(2) The Supreme Court of Puerto Rico held that since the collective bargaining agreements were entered into prior to the enactment of the statute under which Respondents brought their claim, the parties could not have intended the arbitration of rights that

did not exist at the time the agreements were entered into.[5]

This holding conflicts with the rationale of the United States Court of Appeals for the Third Circuit in *Donahue* v. *Susquehanna Collieries Co.*, 138 F. 2d 3 (1943). There, in determining the arbitrability of claims arising under federal statute, the Court noted that it is not "significant that the present arbitration clause in the contract between the parties may have had its origin in dealings years before the statute was thought of." 138 F. 2d at 6. The wisdom of this statement is clear. If the contrary were to be sustained, the congressional policy to enforce compliance with agreements to arbitrate grievances and disputes would be thwarted as to disputes relating to any new statute. The simple enactment by a state, for example, of any statute concerned with wages or hours of employees would thus obviate any contractual requirement to arbitrate disputes concerning such matters. And the matters not subject to arbitration could indeed be very numerous. Disputes and grievances with reference thereto would endanger the stability of industrial relations and the industrial peace sought by the Congress in enacting Section 301(a). As stated by this Court, "Arbitration is the means of solving the unforseeable by molding a system of private law for all the problems which may arise and to provide

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[5] Yet, the Respondents in their complaint claimed that their right to recover double their regular pay rate for their meal periods extends back to 1955 (R. 1-2), before any of the collective bargaining agreements had been entered into. The Supreme Court of Puerto Rico held, however, that Respondents' rights accrued "from June 27, 1961 and not before [Appendix B, *infra* pp. 4a-5a; R. 129]."

for their solution in a way which will generally accord with the variant needs and desires of the parties." *United Steelworkers* v. *Warrior & G. Nav. Co.*, 363 U.S. 574, 581 (1960).

(3) The Supreme Court of Puerto Rico, in determining the arbitrability of the claims in dispute, improperly considered the merits of such claims and the utility of the arbitration procedure for resolving them.[6]

The merits of the dispute in the case have no bearing at all on whether a matter should go to arbitration. In *New Bedford Defense Products Div.* v. *Local No. 1113*, 160 F. Supp. 103, 112 (D. Mass.), *aff'd*, 258 F. 2d 522 (1st Cir. 1958), Judge Wyzanski stated, "Issues do not lose their quality of arbitrability because they can be correctly decided only one way." On appeal Chief Judge Magruder stated that ". . . the court in a § 301 proceeding has no business to concern itself with a preliminary question whether the answer to the grievance on its merits may or may not be entirely clear under the language of the agreement."

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[6] The Supreme Court of Puerto Rico stated (Appendix B, *infra* p. 7a; R. 132):

> "Neither the Grievance Committee nor an arbitrator could validly determine that these workers not be payed double compensation for the lunch hour as is ordered by Act 121. They could not interpret any part of the agreement in a way that would lead to a different result. All that the arbitrator could determine is whether all, one, or which worker worked or did not work during the lunch period. The trial court can reach the same determination which does not involve an interpretation of the agreement, through a special master appointed to receive evidence to that effect. We do not see the necessity nor practical purpose of removing the matter from the Court and sending it to a committee with inevitable loss of time involved."

258 F. 2d at 526. Like the court, an arbitrator does not lose his jurisdiction because of the fact that the proper disposition of the claim may be crystal-clear. This Court has also held that, "The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim." *United Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564, 568 (1960).

In its weighing of the utility of arbitration as compared with judicial procedures, the Supreme Court of Puerto Rico ignores the basic concept and function of labor arbitration as expounded by this Court. Arbitration is part of a system of self-government created to further the common goals of the parties by fostering stable relations and industrial peace. It is these considerations which were of paramount concern to the Congress in its enactment of Section 301(a). They can not be ignored in favor of local considerations. To do so, as the Supreme Court of Puerto Rico has done, is directly contrary to the principles established by this Court in *Lincoln Mills* and subsequent cases.

CONCLUSION

The decision of the Supreme Court of the Commonwealth of Puerto Rico which in this case is required to follow applicable federal law is in direct conflict with the decisions of this Court and the decisions of the United States Courts of Appeals cited above. It is, therefore, respectfully prayed that this petition for a Writ of Certiorari be granted.

Respectfully submitted,

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January 19, 1966

APPENDIX A

Statutes Involved

Labor Management Relations Act of 1947, Section 301(a) (61 Stat. 156, 29 U.S.C. § 185(a)):

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Laws of Puerto Rico, Annotated, Title 29, Section 283 (1964 Supplement for use in 1965, pages 191-193):

> "Section 283. Posting notice of work hours; printed models
>
> "Every employer shall affix in a conspicuous place in the establishment, shop, factory, plantation, farm, office, or place of work, as the case may be, a printed notice setting forth the number of hours of work required daily from the employees during each day of the week, the time to begin and end work, and the time to begin and end the period for taking food; Provided, that the period for taking food shall not be less than one (1) hour, unless for the convenience of the employee, and by stipulation of said employee and his employer, with the approval of the Secretary of Labor, a shorter period be fixed; Provided, that stipulations to said effect shall, once approved by the Secretary of Labor, be valid indefinitely, and none of the parties may, without the other's consent, if the same work relationship continues, withdraw its consent to the sipulation until one (1) year after such stipulation became effective.

"If the employees are unionized, the stipulation for reducing the period fixed for taking food may be effected through collective bargaining or written agreement between the union and the employer, there being no need, in such case, for the individual consent of the employees represented by the union, or for the approval of the Secretary of Labor, the reduction being in such cases effective for the duration of the agreement, or as provided in the collective bargaining agreement.

"Every employer who employs or permits an employee to work during the period fixed for taking food, will be obliged to pay for said period or fraction thereof at a wage rate equal to double the rate agreed upon for regular hours. In cases where, pursuant to the provisions of this section, the period fixed for taking food is reduced to a period of less than one hour, the employer shall be bound to pay a wage rate equal to double the rate agreed upon for regular hours, only if he employs or permits an employee to work during such reduced period fixed for taking food.

"In commercial, industrial, and agricultural establishments, and in such as are devoted to other gainful businesses where persons are employed at alternate hours during all the days of the week, a special notice shall be affixed stating the name of each one of the employees and the hours he works on each day of the week.

"The hours fixed in the notice shall constitute prima facie evidence that such hours of work in each establishment constitute the division of the legal working day.

"Every employer is under obligation to request the printed forms for these notices from the Department of Labor, which shall furnish them gratis.—Amended June 27, 1961, No. 121, p. 261, eff. June 27, 1961; June 22, 1962, No. 88, p. 232, eff. June 22, 1962."

APPENDIX B

Opinion of the Supreme Court of Puerto Rico Reinstating the Complaint and Denying Arbitration (Dated June 30, 1965)

IN THE SUPREME COURT OF PUERTO RICO

Review R-64-163

MIGUEL A. MARTINEZ, etc. *Plaintiffs and Appellants*

v.

COMMONWEALTH OIL REFINING CO., INC.
Defendant and Appellee

Division composed of its President, Associate Justice Mr. Belaval and Associate Justices Messrs. Santana Becerra and Davila.

Associate Justice Mr. Santana Becerra delivered the opinion of the Court at San Juan, Puerto Rico, on June 30, 1965.

On January 24, 1962, three hundred and eighty-two (382) employees of the defendant Commonwealth Oil Refining Co., Inc. filed suit against their employer in the San Juan Section of the Superior Court for the payment of double compensation for time worked during the lunch hour. They claimed to have worked for the defendant since the months of September 1955 and that during said period they were each required to work eight-hours shifts and that consequently they did not enjoy a free hour for the taking of food as provided by Act 379 of 1948; and that they worked during the said hour without stipulation to that effect between themselves and the defendant and the approval of the Department of Labor.

Following various incidents bought about by Commonwealth and several requests for postponements, on January 31, 1964 Commonwealth answered the complaint.

It was contended that the Court lacked jurisdiction since it was a proper matter to be submitted to Grievance Pro-

cedures and thereafter to arbitration, as provided in the collective bargaining agreements in effect between the parties.

On June 25, 1964 the trial Court dismissed the complaint without entering into its merits, since it understood that the prospective effect given by this Court to its opinion in the case of Ceferino Perez v. Autoridad de las Fuentes Fluviales, decided on January 25, 1963, —— D.P.R. ——; applies only to those enterprises covered solely by the laws of Puerto Rico as in the said case and does not apply to enterprises covered by the federal Fair Labor Standards Act such as the defendant herein. We issued a writ of review (The defendant argued that we lacked jurisdiction on the grounds that the petition was not notified on time. We have considered this argument in the light of what is contained in the record and the same has been dismissed) since the writ was issued on September 11, 1964. The appeal was completed on June 4, 1965.

Article 14 of Act 379 of 1948 provides that every employer shall affix a notice setting forth the number of daily hours of work during each day of the week, the hours of starting and finishing work, and the hour when the period for lunch begins and ends, which shall not be less than one hour, unless when for convenience of the employee and by stipulation of the employee and his employer, with the approval of the Department of Labor, a shorter period is fixed.

Article 14 was amended by Act 121 of June 27, 1961 and a provision was added to the effect that every employer who employs or permits an employee to work during the hour set forth for taking food, will pay for said hour or fraction thereof a wage equal to double the wage agreed to for regular hours. See Act No. 88 of June 22, 1962.

The workers claim is only for double compensation for the lunch hour. This right accrued to them by law from

June 27, 1961 and not before. Prior to that date a violation of Act 14 with respect to the period for taking meals could be the cause of other sanctions, but not the payment of double wages, unless it had been so agreed in a collective bargaining agreement. The record in the present case does not show such an agreement.

When this Court provided in its holding in the case of Ceferino Perez that it would have a prospective effect from January 25, 1963, the date upon which it was issued, it made no distinction of any sort between enterprises falling under local legislation only and those to which the Fair Labor Standards Act is applied.

It was unnecessary to establish a difference, and it would have been unnecessary, precisely, because what the Perez case does is to adopt a rule of law which has developed under federal legislation applicable to enterprises affected by said legislation and makes said rule a part of our labor law. In addition, we are not in a position to assure the fact that the enterprise in the Perez v. Autoridad de las Fuentes Fluviales case is an enterprise subject to the applicability of Puerto Rican legislation only, in view of the jurisdictional guide-posts of the National Labor Relations Board as sanctioned by the Congress and in the face of the definition of "commerce" within the Taft-Hartley Act. We made reference to these jurisdictional guide-posts or at least a part of them in Junta de Relaciones del Trabajo v. Nulares' Realty, —— D.P.R.——; decided on September 29, 1964.

Violations of collective bargaining agreements as unfair labor practices under federal legislation have no administrative forum such as is had under our legislation. Such violations must be heard in the courts under Section 301 of the Taft-Hartley Act, 61 Stat. 156. It follows that, in accordance with the more convenient and desirable practices within the purposes of the labor statutes, the federal rule of law has developed in the sense of enlarging

the grievance and arbitration clauses in labor agreements to include all forms of dispute arising out of violation, without thereby excluding those that involve the payment of wages. Nevertheless, the dispute must contain some relation to the agreement itself and its convenants.

In the Ceferino Perez case the collective bargaining agreement contained within its text a clause by virtue of which the Authority agreed to pay double wages in case it should allow any worker to work in excess of eight (8) hours a day or forty-four a week. As seen, the right of those workers to double wages for time worked in excess of 44 hours arose not out of law but from the collective bargaining agreement itself.

In the present case the right of the workers arises from a law adopted for the first time on June 27, 1961. The collective bargaining agreement in effect on that date and on January 24, 1962 when the complaint was filed, had been executed on April 11, 1961. It did not contain any provision relative to the lunch hour. Returning to the reason stated for having given prospective effect only to our decision in the Ceferino Perez case, the contracting parties on April 11, 1961 could not have had in mind a dispute arising from a right which at that time did not exist either under law or by agreement. The prospective effect which we gave to the Perez case is a matter of our own rule which does not in any way interfere with the federal rule of law even when an enterprise is engaged in interstate commerce is involved, particularly in the present case where the right in question is one protected by Puerto Rican substantive law and is not protected by federal substantive law.

Apart from what has been said, let us look into the practical purpose which the trial court should have considered in view of the immovable public policy which has been in force for nearly half a century to the effect that

workers' claims be heard promptly. Neither the Grievance Committee nor an arbitrator could validly determine that these workers not be paid double compensation for the lunch hour as is ordered by Act 121. They could not interpret any part of the agreement in a way that would lead to a different result. All that the arbitrator could determine is whether all, one, or which worker worked or did not work during the lunch period. The trial court can reach the same determination which does not involve an interpretation of the agreement, through a special master appointed to receive evidence to that effect. We do not see the necessity nor practical purpose of removing the matter from the Court and sending it to a committee with inevitable loss of time involved.

This case which has to do with a wage claim has been in litigation for three and a half years and has not been heard yet on its merits. The courts and attorneys should not lose sight of the fact that there is a clear legislative mandate to the effect that this type of case not be unduly delayed.

The judgment dismissing the complaint is revoked and the record shall be returned so that the claim be litigated on its merits and for all other ulterior procedure in accordance with what is expressed herein.

Carlos Santana Becerra
Associate Justice

Judgment of the Supreme Court of Puerto Rico
(Dated and Filed June 30, 1965)

IN THE SUPREME COURT OF PUERTO RICO

Review R-64-163

MIGUEL A. MARTINEZ, FERNANDO L. BAEZ, GILBERTO MARQUEZ AND OTHERS

Plaintiffs-Appellants

v.

COMMONWEALTH OIL REFINING COMPANY, INC.

Defendant-Appellee

Division composed by Mr. Justice Belaval as Chief Judge of Division, and Mr. Justice Santana Becerra and Mr. Justice Davila.

JUDGMENT

San Juan, Puerto Rico, June 30, 1965

For the reasons expressed in the preceding opinion, the judgment rendered by the San Juan Part of the Superior Court on June 25, 1964, is hereby reversed and the case is remanded for trial in the merits and for any other proceedings compatible with the aforesaid opinion.

It was so ordered and decreed by the Court as witnesses the signature of the Chief Justice.

(s) LUIS NEGRON FERNANDEZ
Chief Justice

I attest:

IGNACIO RIVERA
Secretary

Filed: June 30, 1965

Order of Supreme Court of Puerto Rico Denying Reconsideration (Dated October 21, 1965)

IN THE SUPREME COURT OF PUERTO RICO

Review R-64-163

MIGUEL A. MARTINEZ, FERNANDO L. BAEZ, GILBERTO MARQUEZ AND OTHERS

Plaintiffs-Appellants

v.

COMMONWEALTH OIL REFINING COMPANY, INC.

Defendant-Appellee

Division composed by Mr. Justice Belaval as Chief Judge of Division, and Mr. Justice Santana Becerra, Mr. Justice Blanco Lugo, and Mr. Justice Ramirez Bages.

ORDER

San Juan, Puerto Rico, October 21, 1965

The Motion for Reconsideration is hereby denied.

It was ordered by the Court as witnesses the signature of the Chief Justice.

(s) LUIS NEGRON FERNANDEZ
Chief Justice

Certified:

IGANCIO RIVERA
Secretary

APPENDIX C

Order of Superior Court Denying Request for Arbitration (Dated April 2, 1964)

IN THE SUPERIOR COURT OF PUERTO RICO

San Juan Part

Civil No. CS-62-1177

Wage Claim

MIGUEL A. MARTINEZ, FERNANDO L. BAEZ, GILBERTO MARQUEZ et al., Plaintiffs,

v.

Commonwealth Oil Refining Co., Inc., Defendant.

ORDER

In view of the ruling of our Supreme Court in the case of *Ceferino Perez v. Water Resources Authority*, decided January 25, 1963, Special Defense No. 11 is hereby dismissed.

Special Defense No. 10 is likewise dismissed inasmuch as the mere fact that the defendant is engaged in activities forming part of interstate commerce, does not by itself imply that the local laws are not applicable thereto for the benefit of the workmen in the proper case. Pan American World Airways, Inc. v. Superior Court, decided October 2, 1962, and cases therein cited.

Let this Order be notified.

San Juan, Puerto Rico, April 2, 1964.

(s) Manuel A. Moreda
Superior Judge

Order of Superior Court Dismissing Complaint and Directing Arbitration (Dated June 25, 1964; Filed June 30, 1964)

In the Superior Court of Puerto Rico

San Juan Part

Civil No. CS-62-1177

Wage Claim

Miguel A. Martinez, Fernando L. Baez, Gilberto Marquez, et al., Plaintiffs,

v.

Commonwealth Oil Refining Co., Inc., Defendant

ORDER

A motion attacking the jurisdiction of the Court may be considered by any time because of its privileged nature. If the jurisdiction of the court has been assailed and the contentions of the petitioner are dismissed, the latter is not thereby precluded from renewing its attack setting forth its additional arguments which show the lack of jurisdiction. Upon raising the question once more we believe that it is not a reconsideration of the previous order but a new attack based on additional arguments, for which reason we do not believe that Rule 47 of the Rules of Civil Procedure applies.

Regardless of the foregoing reasoning we believe that the Court has power and authority to pass at any time on the question of jurisdiction.

In the case of *Ceferino Perez* v. *Water Resources Authority* our Supreme Court in its judgment of January 25, 1963, made an elaborate study of the advantages that represented for the economy and industrial peace the submission to arbitration of any differences arising between employer and employee in connection with the disputes arising from the application and interpretation of collective agreements. In that case the rule was definitively estab-

lished that: (1) an employer and a labor organization may validly agree in a collective agreement that the wage and overtime disputes be handled and decided through the arbitration proceeding provided in the agreement and (2) that under a valid agreement and an arbitration clause providing that any complaint or claim arising or which might arise in relation to or by reason of the provisions of the agreement and where any wage claim has not been excluded from its arbitration clause, controversies on overtime and wages may be decided and shall be decided through arbitration.

However, our Supreme Court felt that it was advisable that the judgment should only have prospective effect. It justified its action by the theory that the agreements already made were not drafted and approved by the parties bearing in mind the rule in the cited case. We believe there is no reason why said fear should find its way in cases like the one at bar. We are dealing with an enterprise covered by the Federal Fair Labor Standards Act and when the agreement was executed the parties had to know that the legislation and the rules of construction established in the federal jurisdiction were applicable to the agreement they executed. It is a fact beyond discussion that in the federal jurisdiction the disputes for overtime and wages are subject to the grievance proceeding established in the collective agreements.

There being no reason for the fear which induced the Supreme Court to provide that the rule established in the *Perez* case would only have prospective effect, we have decided to lay down the following rule:

In cases where the enterprise is covered by the provisions of the Fair Labor Standards Act and there exists a collective agreement in which an adequate mechanism of arbitration is established to settle the controversies on wages and overtime, the workmen shall resort to the arbitration proceeding before going to court, regardless of the date on

which the agreement was argued and signed. We believe that the restriction established in the *Perez* case should only apply to enterprises covered by the local law alone.

For the reasons stated the complaint is hereby dismissed and it is ordered that the claim be submitted to the arbitration proceeding established in the collective agreement.

San Juan, Puerto Rico, June 25, 1964.

(s) Manuel A. Moreda
Judge

APPENDIX D

Pertinent Provisions of the Grievance and Arbitration Clauses of the Collective Bargaining Agreements Involved

(Agreement Effective September 7, 1956 through September 9, 1957)

(R. 11-12)

"ARTICLE VI—GRIEVANCE AND ARBITRATION. It is the intent of the parties to this agreement that the following procedure shall serve as a means for peaceable settlement of all disputes that arise as to the meaning or application of any provisions of this contract.

"(a) The dispute or grievance shall be taken up by the aggrieved employee to his supervisor within four (4) working days after the grievance occurred. The supervisor must give his answer within the next twenty-four (24) hour period.

"(b) Should any difference arise between the parties that cannot be satisfactorily adjusted between the supervisor and the worker, the grievance shall be submitted in writing and certified or by personal delivery within one (1) week to the Grievance Committee.

"GRIEVANCE COMMITTEE: The Grievance Committee shall consist of two (2) members selected by THE COMPANY and two (2) members selected by THE UNION. In the event that these four (4) members of the Grievance Committee fail to agree upon the disposition of a dispute or grievance, the parties shall appoint a fifth (5th) member by mutual agreement from the arbitrators of the Conciliation and Arbitration Board whose decision will be final and binding."

(Agreement Effective September 10, 1957 through April 10, 1959)

(R. 12-13)

"ARTICLE VI—GRIEVANCE AND ARBITRATION. It is the intent of the parties to this agreement that the following procedure shall serve as a means for peaceable settlement of all disputes that arise as to the meaning or application of any provisions of this contract.

"(a) The dispute or grievance shall be taken up by the aggrieved employee to his immediate supervisor within four (4) working days after the grievance occurred. The supervisor must give his answer within the next forty-eight (48) hour period. It is understood that regularly scheduled off-days, holidays, vacations and sick days, on the part of either the aggrieved employee or his immediate supervisor, will not be counted in figuring the time limits established above.

"(b) If settlement is not thus obtained, the employee shall then present this case to THE UNION, which shall immediately conduct a thorough investigation into the facts of the case, and if it is found that there is no ground for complaint, the employee shall be so notified. IF THE UNION decides the complaint is justified, it shall be submitted in writing, by certified mail or by personal delivery, within two weeks to the Grievance Committee.

"*GRIEVANCE COMMITTEE*—The Grievance Committee shall consist of two (2) representatives selected by THE COMPANY and two (2) representatives selected by THE UNION. In the event that these four (4) members or representatives of the Grievance Committee fail to agree upon the disposition of a dispute or grievance, the parties shall appoint an arbitrator or fifth (5th) member by mutual agreement from the arbitrators of the Conciliation and Arbitration Board, whose decision will be final and bind-

ing for both parties. In case that the Grievance Committee or its arbitrator or fifth member decides that, within the provisions of this contract, an employee has been unjustifiedly separated or fired from his work, THE COMPANY agrees to replace the aggrieved employee on his job or in one equivalent in category and salary, binding THE COMPANY itself to pay back to said employee the salaries that the arbitrator or fifth member decides is due for time lost during the period the employee was out of his job; it also being understood that time lost due to such unjustified separation will not be counted against his vacation rights, sick leave benefits or accrued length of service."

(Agreement Effective April 11, 1959 through April 10, 1961)

(R. 13-16)

"ARTICLE IX—COMMITTEE FOR THE ADJUSTMENT OF GRIEVANCES.

"A. THE COMPANY and THE UNION shall appoint two representatives each to deal with any problem, difference or dispute arising during the life of this Agreement and any extension or renewal thereof. The four representatives thus selected shall constitute the Committee for the Adjustment of Grievances. Both THE UNION and THE COMPANY may submit disputes, grievances or controversies to the Committee. Any dispute, grievance or difference shall be dealt with as provided herein. Should an employee have a grievance or dispute, an earnest effort shall be made to adjust the matter as provided herein:

"• • • • • • • • • •

"ARTICLE X—ARBITRATION

"Any grievance or difference arising between the PARTIES, which is not satisfactorily adjusted, under the preceding applicable provisions of this Agreement, shall be

promptly referred to arbitration, at the request of either Party hereto. The Arbitrator shall be one of the members of the Arbitration Panel of the Department of Labor of the Commonwealth of Puerto Rico.

"* * * * * * * * * *"

(Agreement Effective April 11, 1961
through April 10, 1963)

(R. 16-19)

"ARTICLE IX—COMMITTEE FOR THE ADJUSTMENT OF GRIEVANCES

"A. THE COMPANY and THE UNION shall appoint two representatives each to deal with any problem, difference or dispute arising during the life of this Agreement and any extension or renewal thereof. The four representatives thus selected shall constitute the Committee for the Adjustment of Grievances. Both THE UNION and THE COMPANY may submit disputes, grievances, or controversies to the Committee. Any dispute, grievance, or difference shall be dealt with as provided herein. Should an employee have a grievance or dispute, an earnest effort shall be made to adjust the matter as provided herein.

"* * * * * * * * * *

"ARTICLE X—ARBITRATION

"Any grievance or difference arising between the Parties, which is not satisfactorily adjusted, under the preceding applicable provisions of this Agreement, shall be promptly referred to arbitration at the request of either Party hereto. The Arbitrator shall be one of the members of the Arbitration Panel of the Conciliation and Arbitration Division of the Department of Labor of the Commonwealth of Puerto Rico.

"* * * * * * * * * *"

APPENDIX E

Additional Respondents as Named in Appendix A (R. 3-6) to the Complaint

1. Julio Figueroa
2. José M. Ramos
3. Tito Echevarria Montes
4. Santiago Borges
5. Carlos M. Rios
6. Angel-L. Matos Serrano
7. Raul Vargas Vélez
8. Miguel Lopez Cintrón
9. René Torres
10. José A. Dalmau
11. Alfredo Chardón
12. Jesús Pérez
13. Daniel Capestany
14. Efrain Torres Sepúlveda
15. Francisco Ortiz
16. José A. Rivera Franceschi
17. Carlos Remedio Navas
18. Alfred Shaia
19. Francisco J. Escalera
20. Ismael León Rivera
21. Paulino Morales
22. Sergio Muñiz
23. José E. Naveira
24. Oscar Ramírez
25. Juan Feliciano
26. Carlos J. Caraballo
27. Luis A. Baez
28. Carlos R. Marrero
29. Vicente López
30. Angel Batalla
31. Genaro Rivera
32. Jaime L. Batis
33. Juan Gonzalez Badillo
34. Pedro J. Cruz
35. Miguel A. Rodriguez
36. Felix Malavé
37. Francisco Cruz
38. Ernesto López Rosario
39. Ignacio Velez
40. Ismael Diaz, Jr.
41. Alberto Torres Irizarry
42. Gilberto Rodriguez
43. Clotaldo Torres Cotty
44. Francisco Rodriguez Santana
45. Rubén Pérez Torres
46. Salvador Martinez
47. José E. Castillo Veitia
48. Luis E. Fernández
49. Cesar Montalvo
50. Germán Lugo
51. Fernando Santiago
52. Blas V. Cabrera
53. Eugenio Aguirre García
54. Pedro Laboy Arrufat
55. Carlos E. Pagán
56. Armando Irizarry
57. Juan A. De Lleguas
58. Vicente Molina
59. Juan Franceschi
60. José L. Collazo
61. Israel Gaud Vélez
62. Leopoldo Gaztambide
63. Carlos G. Colón
64. William Pérez
65. Noel Torres García
66. Félix Raúl Alomar
67. Fernando L. Rivera
68. José F. Batistini
69. Isaac Sánchez Rivera
70. Jorge A. Cruz
71. Pedro J. Carballo
72. Luis Neddy Figueroa
73. José A. Vega Ortíz
74. Israel González
75. Alonso Hernández
76. Remí Torres Gervoni
77. Germán Sánchez
78. Juan A. Delgado
79. José Oscar Rodríguez Suárez
80. Julio C. Vélez Pellicier
81. Ramón L. Rodríguez
82. Agustín Rivera
83. Juan A. Vidal
84. Manuel Pino Valdivieso
85. César Augusto Ortíz
86. Angel D. Cruz
87. Primitivo Caraballo
88. José Pietri Santos
89. Víctor M. Subirana
90. Eugenio Droz

91. Bernardo Santiago Bloglio
92. Faustino Zapata Rodríguez
93. Edwin Maldonado
94. Hipólito Rosario Berrios
95. Enrique Flores Arroyo
96. Santos A. Camacho
97. Arcadio Padilla Quiles
98. José Emilio Gautier
99. Federico H. Ramos
100. Radamés Vega Gutierrez
101. Juan Rodríguez Torres
102. Tomás F. Vega
103. Ramón Costas Martínez
104. Jorge Luis Negrón
105. Juan Camacho Pacheco
106. William Rivera
107. Ceferino Vigo Ríos
108. Carlos Padró
109. Raimundo Valladares
110. Carlos Maldonado
111. Juan I. Mercado
112. Luis E. Feliciano
113. Enrique Camacho
114. Juan Franceschi
115. Saulo Lugo Arroyo
116. Carmelo Borrero
117. Ramón Luis Irizarry
118. Carmelo Rodríguez López
119. Andrés Almodovar Rodríguez
120. Juan E. Ramírez
121. Angel O. Camacho
122. René Guzmán Vega
123. Eustaquio Figueroa
124. Fidel Vélez de Jesús
125. Agapito Rodríguez
126. Rafael Rodríguez Echevarría
127. Miguel Arce Báez
128. Domingo Ocasio
129. Raúl Medina
130. Luis M. Couret
131. Filipo de Jesús
132. Ramón Luis Ortíz
133. Juan R. Caraballo
134. Diego Soto Torres
135. Adolfo Luciano Figueroa
136. Néstor Cruz
137. Pascual Cruz
138. José Morales
139. Alberto Barriera Vázquez
140. Enrique Nazario
141. José A. Caraballo
142. Críspulo Pérez
143. Emilio Vélez Martínez
144. Ramón L. González
145. Jesús Figueroa
146. Héctor L. Franceschi
147. Juvencio Rodríguez
148. Clemente Pérez
149. Andrés Martínez
150. Francisco Flores
151. Ismael Rivera Caquías
152. Juan López
153. Enrique Feliú Milán
154. Domingo Jiménez
155. Fernando L. Pagán
156. Teófilo Valentín Suárez
157. Francisco M. Cortés
158. James A. Conolley
159. Julio Valle Miletti
160. Jorge Zambrana
161. Cándido Morales
162. Carmelo Godreau
163. Jorge Rodríguez Salort
164. Domingo Betances
165. Manuel R. Montalvo
166. Luis A. Torres
167. Eladio Rivera Echandi
168. Antonio L. Román
169. William Rodríguez Rentas
170. Miguel A. Silva
171. Pedro Jaime Rodríguez
172. Efraín Santos
173. Félix Arce Báez
174. Modesto Cortés
175. Héctor Vázquez
176. Basilio Báez
177. Samuel Rodríguez
178. Tomás Ferrer Vilá
179. Angel Lahoz Díaz
180. José B. Aponte
181. Teodoro Torres
182. Edwin Montalvo Vélez
183. Luis Alberto Rodríguez
184. Luis A. Bernacet
185. Jaime A. Rodríguez Vázquez
186. Ildefonso Milán Santiago

187. Ever A. Mercado
188. Emilio Ducós Quintana
189. Efraín Echevarría Rosario
190. Héctor Aponte Avilés
191. Felipe Pagán
192. Luis Ortiz
193. Ismael Sepúlveda
194. Charles M. Faría
195. Benigno Rodríguez
196. Miguel Pérez
197. Eusebio Torres Cordero
198. Máximo Díaz
199. Alfredo Irigoyen
200. Ismael Rosado Mandry
201. Antonio J. Battiatini
202. Salvador L. Busquets
203. Epifanio Cruz Román
204. Luis Emmanuelli
205. Pablo Aponte
206. José A. Ortiz Oliveras
207. Juan Estaban Colón
208. Américo Delgado
209. Perfecto Rodríguez Borrero
210. Antonio Torres Santiago
211. Ramón Pagán Cedeño
212. Gilberto Avilés
213. Pedro A. Jacome
214. Jerónimo Casanovas
215. Pedro J. Benítez
216. Confesor González
218. James Jesse Davis
218. Marcos Efraín Ortiz
219. Héctor F. Torres
220. Arquímides Mendoza
221. Luis Alberto Pérez
222. José A. Martínez Olivari
223. Pablo Santos Cruz
224. Juan A. Rivera
225. Luis A. Buzó
226. Eugenio Irizarry Zayas
227. Carlos Rodríguez
228. Miguel A. Román
229. Juan Martínez
230. Elvin Vargas González
231. Víctor M. Castro
232. Wilfredo García Rosado
233. Ernesto Pérez
234. José Luis Vern
235. José Blasini
236. Pedro Díaz Duent
237. Wendell Toro
238. Osvaldo Vigas García
239. Mariano Ponce Rodríguez
240. Herminio Santos
241. Luis A. Santos García
242. Pedro Arce Borrero
243. Jorge L. Teissoniere
244. Julio A. Galíndez
245. Héctor Correa
246. Radamés Crescioni
247. Luis F. de Jesús
248. Orlando León Rodríguez
249. Leopoldo Irigoyen
250. Manuel Núñez
251. Juan Vázquez de Jesús
252. Tomás Vázquez Mirabal
253. Mateo Giorgi
254. Carlos Padró
255. José A. Rodríguez
256. David Matos Vázquez
257. Remigio Torres González
258. Angel Luis Irizarry Rivera
259. Ramiro Segarra Roble
260. Juan Rivera Jorge
261. Carlos Soto González
262. Julio E. Martínez
263. Jaime Girón Díaz
264. Carlos Olivieri
265. Victorio García Torres
266. Gilberto Lugo
267. Radamés López
268. Reinaldo Maldonado
269. Julio Figueroa
270. Robert P. Saunders
271. Pedro Ramos Yordán
272. Raúl E. Morales
273. Monserrate Rivera
274. Jimmie Maldonado Lugo
275. Francisco Vega Rodríguez
276. Carlos Enrique Teissoniere
277. Joaquín A. Rivera
278. Jorge León
279. Jabes C. Pagán
280. Angel Green
281. Juan J. Jaime
282. Higinio Bayrón
283. Julio Avilés Lugo
284. José A. Alvarez

285. Carlos E. Avilés
286. Guillermo Alonso
287. Cavaldo Arce
288. Adrián Acevedo
289. José Aranzamendi
290. Félex Arquer Cordero
291. Luis A. Batistini Rodríguez
292. Julio Benet Rivera
293. Rafael Bartolomei
294. Hiram Bonilla
295. Pablo Borrero
296. Fernando Camacho
297. Wallace Castro
298. Mario Carrión
299. Ramón Carmona
300. Víctor Cruz Sepúlveda
301. Ismael Caraballo
302. Rubén Collazo
303. Neftalí Centeno
304. Rogelio Castillo Vela
305. Francisco Emmanuelli Castillo
306. Héctor Feliciano
307. Pedro Gratacoz
308. Rosario González
309. Pedro L. González
310. Gerardo González
311. René Garrastasu
312. Pedro Guilbe
313. Isaias Hernández Rivera
314. Samuel Irizarry
315. Efraín Irizarry
316. Hector Irizarry Ortíz
317. Santos Irizarry
318. Cruz Lugo
319. Luis A. Lugo
320. Israel Martínez Rivera
321. José A. Martínez
322. Max Monge
323. Edilberto Montalvo
324. Octavio Meléndez Rivera
325. Ismael Miranda Rivera
326. Luis A. Ocasio
327. José Ortíz
328. Jaime Pérez Garay
329. Jesús Pérez Arroyo
330. Pablo Pietri
331. Luis Guillermo Piris Castaing
332. Mariano Pagán Galarza
333. Alfredo Pérez
334. César Piña Sepúlveda
335. Carlos Quiñones
336. Antonio Rodríguez González
337. Francisco Rodríguez Bauzá
338. Orlando Rivera
339. Roberto Rosario Torres
340. Angel Rodríguez Rodríguez
341. Florencio Rivera
342. Julio Rodríguez *Montilla*
343. Carlos Rentas
344. Pedro Juan Rodríguez
345. Alfredo E. Rodríguez Riera
346. Raúl Román Santos
347. Pedro Ramos
348. Félix A. Santiago
349. Pablo Santiago Morales
350. Néstor J. Sanabria
351. Francisco Sepúlveda
352. Benjamín Santos
353. Víctor Santos Ramos
354. Rafael Sánchez Ocasio
355. Germán Santiago
356. Aurelio Tardy
357. Domingo Torres Guzmán
358. Francisco Torres
359. José Texidor Pacheco
360. Ernesto Valentín, Jr.
361. Ricardo Vega
362. Enrique Vázquez
363. Luis Villodas
364. Luis A. Velázquez Iglesias
365. Alfonso Vila
366. Luis Yordán
367. Miguel Acevedo
368. Carlos Crespo Marín
369. Luis A. Cruz Pagán
370. Roberto González
371. Juan Santiago González
372. Alfredo Rodríguez
373. Carlos Rodríguez
374. Pedro J. Pérez Zayas
375. Frank Romanelo
376. Laudino Medina
377. Luis A. Vázquez Ortíz
378. Dudley T. Crow
379. Ramón Antonio Díaz
380. Luis G. Rodríguez
381. Edgardo Padilla
382. Bolivar Toledo